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## THE CONSTITUTIONAL POSITION OF THE ROMAN DICTATORSHIP

BY CLINTON WALKER KEYES

It has been generally assumed that the dictatorship was in theory a temporary revival of the absolute and concentrated power of the kingship, to be used only in emergencies when the divided and conflicting imperium of the consuls would endanger the safety of the state. Mommsen proposed an entirely different theory.<sup>1</sup> Although admitting that a dictatorship amounted *practically* to a revival of the royal power, he maintained that in theory the office was only a part of the consulship, the dictator being added to the constitution as a *collega maior* of the consuls. That is, the imperium of dictator, consul and praetor was of exactly the same character, each of these officers having the right to act independently, but the consul's power being greater than the praetor's, and the dictator's greater than the consul's. In considering these theories the analogy between the kingship and the dictatorship does not seem very important in itself; the really significant question is whether the imperium of the dictator is of exactly the same kind as the consul's, but greater, or of an entirely different character. The solution of this problem depends on the question of the status of the consuls during a dictatorship. If they retained and exercised their full powers, then we must conclude that Mommsen is right in calling the dictator their *collega maior*. But if they lost their imperium during a dictatorship,—if the dictator's imperium took the place of theirs, then a dictatorship was really a temporary return to the kingship,—a substitution of an emergency government for the ordinary Republican constitution.

The defenders of both these theories have used the evidence in regard to the dictatorship at different periods of its history indiscriminately. But as I believe that the constitutional position of the dictatorship underwent a distinct change between the early period of the Republic and the Second Punic War, which marks the end of the true Republican dictatorship, I must consider the character of the office in the different periods separately.

<sup>1</sup> *Röm. Staatsrecht*, 3rd Edition, II, 1, pp. 153 ff.

Let us first glance at the dictatorship in its final period, when the detailed accounts of the historians allow us to see its status clearly. It is obvious that during the dictatorships of the latter half of the third century B. C. the consuls did not lose their imperium. They continued their independent activities as a matter of course after the appointment of a dictator, unless they received orders from him. The dictator does not appear to have the power of an absolute monarch at all; he refers questions of policy to the Senate just as the consuls do, and abides by its decision.<sup>2</sup> The consuls usually hold independent commands, and often a dictator seems to have been appointed not so much in order to provide a supreme commander-in-chief as simply to increase the available number of holders of the imperium. In this period, in fact, there can be no doubt that the imperium of the dictator is of the same character as that of the consul and praetor, and that he is simply their *collega maior*. In one case, indeed, Livy actually mentions the *maius imperium* of the dictator.<sup>3</sup>

But when we come to the early Republic we find evidence which seems to be contradictory. The Greek writers Polybius, Dionysius, Plutarch and Appian agree that the consuls lost their imperium during a dictatorship. Two of the most important passages are as follows:

Polybius III, 67, 8: Οὗτος [the dictator] δ' ἔστιν αὐτοκράτωρ στρατηγὸς οὗ κατασταθέντος παραχρῆμα διαλύεσθαι συμβαίνει πάσας τὰς ἀρχὰς ἐν τῇ Ρώμῃ πλὴν τῶν δημάρχων.

Dionysius V, 70 (describing the appointment of the first dictator): ἡ βουλὴ ἔκρινε τὴν μὲν ὑπατικὴν ἐξουσίαν ἀνελεῖν κατὰ τὸ παρὸν, ἐτέραν δὲ τινα ἀρχὴν ἀποδείξαι πολέμου τε καὶ εἰρήνης καὶ παντὸς ἄλλου πράγματος κυρίαν . . . χρόνου δ' εἶναι μέτρον τῇ νέᾳ ἀρχῇ μῆνας ἕξ, μετὰ δὲ τὴν ἐξάμηνον αὐθις ἄρχειν τοὺς ὑπάτους . . . ἦν δὲ τὸ προβούλευμα τοιόνδε · Λάρκιον μὲν καὶ Κλοίλιον τοὺς τότε ὑπατεύοντας ἀποθέσθαι τὴν ἐξουσίαν καὶ εἴ τις ἄλλος ἀρχὴν τινα εἶχεν ἢ πραγμάτων τινῶν κοιῶν ἐπιμελείαν · ἓνα δ' ἄνδρα, ὃν ἂν ἡ τε βουλὴ προέλῃται καὶ ὁ δῆμος ἐπιψηφίσῃ, τὴν ἀπάντων ἐξουσίαν

<sup>2</sup> Liv. xxii, 11, 1; xxiii, 24, 1.

<sup>3</sup> xxx, 24, 3 (a. 203): *dictator ad id ipsum creatus P. Sulpicius pro iure maioris imperii consulem in Italiam revocavit.*

παραλαμβάντα ἄρχειν μὴ πλείονα χρόνον ἑξαμήνου, κρείττονα ἐξουσίαν ἔχοντα τῶν ὑπάτων.<sup>4</sup>

It is to be noticed that the statements of these Greek authors do not indicate merely that the suspension of all other executive offices during a dictatorship had been the custom in early times, but also that this was still the case in the final period of the dictatorship. In fact, Polybius' description of the dictatorship which I have quoted above is given in connection with the appointment of Fabius Maximus as dictator in the Second Punic War. We have already seen that the account they give is not correct for this late period. And even in regard to the early period their testimony is contradicted by several passages from Livy. He tells us, for instance, that in 494, when a dictator was appointed and ten legions levied against the Volsci, Aequi and Sabines, four were commanded by the dictator, and three given to each of the consuls.<sup>5</sup> There are several other cases scattered through Livy's narrative in which consuls are represented as holding independent commands during a dictatorship,<sup>6</sup> and once a clear indication is given that he considers the relation of dictator to consul as one of *maius imperium* in this period also.<sup>7</sup>

Therefore Mommsen, basing his theory on the testimony of Livy, has decided that the evidence of the Greek authors is entirely untrustworthy. A surprising mistake on the part of Polybius, he thinks, led Dionysius, Plutarch and Appian astray on this point, as no Roman writer shares their view.<sup>8</sup> But it can only be because Mommsen is so thoroughly convinced of the correctness of his own theory, that he rejects this important evidence so summarily. Polybius is our most trustworthy source of information in regard to the early Roman Republic. Besides, it does not seem at all probable that Dionysius and Appian were using him as a source in

<sup>4</sup> Cf. also Dionysius v, 72; xi, 20; Appian, *Bell. Hannib.* 12; 16; Plutarch, *Camill.* 5; *Anton.* 8; *Quaest. Rom.* 81.

<sup>5</sup> ii, 30, 7.

<sup>6</sup> iv, 27, 2 (a. 431); vii, 11, 8 (a. 360); viii, 29, 11 (a. 235), etc.

<sup>7</sup> viii, 32, 3 (a. 325): *tum dictator: "quaero," inquit, "de te, Q. Fabi, cum summum imperium dictatoris sit, pareantque ei consules, regia potestas, praetores, . . . aequum censeas necne magistrum equitum dicto audientem esse?"*

<sup>8</sup> *Röm. Staatsrecht*, 3rd Edition, ii, 1, p. 155, n. 4.

the passages referred to above. And although no Roman writer expresses the same idea by a definite statement, it is easy to find indications that this tradition did exist among the Romans. Cicero's "law" regarding the dictatorship (representing the actual practise of the early Republic as he understood it) is as follows (Teubner text): *Ast quando bellum gravius, discordiae civium escunt, oenus ne amplius sex menses, si senatus creverit, idem iuris quod duo consules teneto, isque ave sinistra dictus populi magister esto, equitatumque qui regat habeto pari iure cum eo quicumque erit iuris disceptor; reliqui magistratus ne sunt.*<sup>9</sup>

The last clause would prove Cicero's complete agreement with Polybius, but unfortunately this is not the manuscript reading. These words were transposed by Huschke from the following paragraph to improve the sense, but it is quite possible that they may refer to the *interregnum*, and not to the dictatorship at all. But the words *idem iuris quod duo consules teneto* seem to point in the same direction.<sup>10</sup> The reasonable interpretation of this clause seems to be that the dictator is to receive the same power as is ordinarily held by the two consuls, and thus is to take their place in the government. What can it mean if the consuls are to retain their full powers? And Cicero expresses the same idea still more clearly in the *De Republica*:<sup>11</sup> *Gravioribus vero bellis etiam sine collega omne imperium nostri penes singulos esse voluerunt.* The use of the words *omne imperium* instead of *summum* or *maximum imperium*, and the expression *sine collega* seem to prove that Cicero's idea of the early Republican dictatorship agreed with that of Polybius, Dionysius, Plutarch and Appian.

Another interesting piece of evidence on this point can be obtained by the comparison of Appian's and Livy's accounts of the treatment of the consul Servilius by the dictator Fabius Maximus in 217 B. C. Appian's statement is: *Φάβιος Μάξιμος ὁ δικτάτωρ Σερούλιον μὲν ἐς Ρώμην ἐπεμπεν ὥς οὔτε ὑπατον οὔτε στρατηγὸν ἔτι ὄντα δικτάτορος ἡρημένον.*<sup>12</sup> It is improbable that Appian is here following Polybius, as stated above. This part of his narrative differs in details from that of Polybius, and it is now generally

<sup>9</sup> *De Legibus*, III, 3, 9.

<sup>10</sup> For Mommsen's comment on this, see *op. cit.*, p. 155, n. 3.

<sup>11</sup> I, 40, 63.

<sup>12</sup> *Bell. Hannib.*, 12.

believed that some Roman annalist was his source. But, on the other hand, we know that, in the period referred to, there were consuls and praetors during a dictatorship, and that this statement, if true at all, can be applicable only to a much earlier time. Livy,<sup>13</sup> in relating the Servilius incident, tells us that Fabius sent a messenger to Servilius ordering him to appear before him without his lictors.<sup>14</sup> It seems probable that the actual facts were that Fabius found it necessary for some reason to assert his authority over Servilius in an emphatic manner, and that in doing so he appealed to an old half-forgotten law which denied the existence of any other imperium during a dictatorship.

Even in Livy's narrative we find several indications of the idea that such a state of affairs existed in the early period. The dictator Cincinnatus in B. C. 458 is represented as ordering a consul to resign his office, but to remain in command of his army as the dictator's *legatus*;<sup>15</sup> and in B. C. 402 one of the military tribunes with consular power threatens to appoint a dictator, who, as he says, can force his colleagues to resign their offices.<sup>16</sup> Of course a consul had no such power as this over a praetor, so that here we have a clear indication of a tradition that the legal relation of the dictator to the consul had been quite different from that of the consul to the praetor.

The following passage, if it is to be taken literally, may be of significance also: *senatus, finire imperium consulibus cupiens, dictatorem adversus rebellantes Latinos dici iussit*.<sup>17</sup> And, if an argument from silence is permissible, the fact that in a great majority of cases in Livy's narrative of the early period, no activities on the part of the consuls during a dictatorship, either as independent executives, or as the dictator's subordinates, are recorded, would seem to add to the probability that they lost their official power in such cases. It is certainly clear that Livy's total

<sup>13</sup> XXII, 11, 5. Cf. Plutarch, *Fab.* 4.

<sup>14</sup> Even such an order, of course, would not be given by a consul to a praetor. Mommsen's explanation (*Röm. Staatsrecht*, 3rd Edition, I, p. 378, n. 3) is quite insufficient.

<sup>15</sup> Liv. III, 29, 2. Cf. IV, 32, 9 (a. 426), where T. Quinctius Pennus, who before the dictatorship was *tribunus militum consulari potestate*, is simply called *legatus*.

<sup>16</sup> Livy V, 9, 6.

<sup>17</sup> Livy VIII, 12, 12 (a. 339).

evidence on this point is not entirely in favor of either side of the question. Of course, in his narrative of the early period, the detailed statements from which evidence on both sides has been drawn cannot be considered as parts of a narrative of actual events. They have value chiefly as showing opinion of Livy, or rather of his sources, on the status of the dictatorship in the early times. Evidently two contradictory opinions have been woven into the narrative. Which of these opinions, then, has the better claim to be considered as based on a real tradition handed down from the period under consideration? Livy's sources were annalists of the period of the Second Punic War and a little later. What is more natural than that these annalists should have interpreted the narrative of the early dictatorships by the light of their knowledge of the status of the office in their own time? On the other hand, the indications of the opposite point of view which appear in Livy's narrative can only be explained by supposing that they originated in a really ancient tradition, which was also the source of the statements of the Greek writers and of Cicero.

We must next consider whether the supposition that the dictator took the place of the other executive officers of the state agrees with our other information about the office and about the governmental system of the early Republic. Our knowledge of the origin of the dictatorship has recently been increased by the researches of A. Rosenberg, who has made it very clear that the office came into the Roman constitution from other Italian cities.<sup>18</sup> In Alba and Caere the period of the kingship was followed by one in which the city was governed by a single magistrate, the dictator, having the absolute powers of the king, but holding office for one year only. This idea of the use of the royal power in a republic was evidently adopted in a still more modified form by the Romans as an occasional emergency measure only, the term being limited to six months. This being the case, it is much more reasonable to think of this emergency constitution as being substituted for the regular constitution of the state, which was temporarily suspended, than of its being added to or amalgamated with the usual govern-

<sup>18</sup> *Der Staat der alten Italiker*, Berlin, 1913, pp. 71 ff. The evidence in favor of W. Soltau's interesting theory in regard to the nature of the early dictatorship does not seem sufficient to be convincing. See *Hermes* 49 (1914), pp. 352-368.

ment. In this early period, of course, Rome was a small city-state for which two executive officers, the consuls, were quite sufficient. When an emergency arose which made the use of a single executive with absolute power desirable, the government was handed over to the dictator, who appointed an inferior colleague entirely subject to his orders, the *magister equitum*. The dictator had the same right as the consuls to appoint a *praefectus urbi*<sup>19</sup> with executive powers in the province "domi" when his own presence was required, as was usually the case, in the more important sphere, "militiae." Such a temporary arrangement evidently provides completely for the government of the early Roman state; we have just seen that a similar dictatorship was the regular and permanent government of some of Rome's neighboring cities. Thus it seems obvious that there could have been no place for the consuls in this emergency government.

It remains to be considered why and how the change from this state of affairs to the situation at the time of the Second Punic War took place. It seems clear that such a change was absolutely necessary if the dictatorship was to continue in existence after Rome ceased to be a small city-state. As the extent of Roman territory increased, the number of executive officers was multiplied, and just as two consuls became insufficient for the government of the state in ordinary times, so the dictator alone could no longer exercise all the powers of government in a time of emergency. He had the right to appoint as many *legati* as he wished to assist him, and the regular consuls of the year would seem to have been the natural persons to appoint to such positions in many cases. But as the state continued to grow it may have seemed desirable to go farther than this. As the consuls' loss of imperium during a dictatorship was only temporary, and it was restored to them without formality upon the resignation of the dictator, it may have seemed expedient for the dictator to allow the consuls and other magistrates to continue to exercise their normal powers, subject to his orders, just as if they did actually retain their imperium. In order to disturb governmental affairs as little as possible, it may gradually

<sup>19</sup> Cf. Liv. VIII, 36, 1, where an account is given of such an appointment when other magistrates seem to have been present in the city. Mommsen's explanation is insufficient. (See *Röm. Staatsrecht*, 3rd Edition, I, p. 665, n. 3.)

have become the custom for the dictator to issue, immediately after his appointment, an edict providing that the consuls, praetors and other executive officers should exercise their powers as usual until further orders. The existence of such a state of affairs would explain the case mentioned above, in which, according to Livy, a dictator forced a consul to resign his office. The dictator would then merely be depriving the consul of the powers which he had voluntarily granted to him.

When this custom became fully established as a precedent, it is easy to see how it came to be taken for granted in every case, and how the dictator became what he was in the time of the second Punic War, simply a *collega maior* of the consuls. Thus the gradual development of the dictator from the position of an absolute ruler, whose power took the place of that of all the regular executive officers, into a magistrate who was merely superimposed upon the existing constitution, is seen to have been a necessary consequence of the growth of the Roman state.

*The University of North Carolina.*

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